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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/529,957	04/21/2000	MIKAEL HERTZMAN	44662-59506	2702

466 7590 07/02/2003

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EXAMINER

BALI, VIKKRAM

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 07/02/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/529,957

Applicant(s)

HERTZMAN ET AL.

Examiner

Vikram Bali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other:

## **DETAILED ACTION**

### ***Specification***

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding claims 1 and 10, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claims 2-9 and 11-21 are rejected as they are depending upon claims 1 and 10.

5. Regarding claims 4, 16, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by

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"or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

6. Claims 5 and 17 recites the limitation "different rows" in line 3 and 4 respectively. There is insufficient antecedent basis for this limitation i.e. plurality of rows in the claim.

7. Claims 6 and 19 it is unclear what the "point of balance" is.

8. Claim 9 it is unclear what the "roll of the tool" is.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

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not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashima et al (US 5617335).

With respect to claim 1, Hashima discloses a method for touch free measurement of a tool or accessories by one imaging means (see col. 7, lines 41-49, and camera in figure 1) providing a number of measuring elements ...having a size large enough for making ...form and calculation of at least one image point (see col. 9, lines 40-58, col. 11, lines 35-50 for the 3D as col. 9 does X and y and col. 11 has the Z axis calculation, and see figure 6 for the marks) as claimed. However, he fails to disclose the element that the element ...to be obscured by some obscuring object as claimed. But, one ordinary skilled in the art at the time of invention can see that the obscured or basically any mark could be simply be called as obscured mark. Therefore, at the time of invention one can take the Hashima's disclosure for reorganization of the 3D mark and could create the 3D image of any obscured mark for the purpose of 3D creation.

With respect to claims 2-9 Hashima discloses lined measuring elements, are positioned on at least one row, ...line going through; calculation of the 3D position; markers having the same shape; uniquely determined position for each differently

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shaped marker; at least two rows; rows are parallel; roll of the tool is derived, (see figures 11-12 for the lined markers; figure 14 and 16 for calculation of 3D position, figure 13 for lined markers, and col. 9-13 for the description of calculation and the methodology for calculating the position of the markers) as claimed.

Claims 10-21 are rejected for the same reasons as set forth for the rejection of claims 1-9, because claims 10-21 are the apparatus claims claiming the method as claimed in claims 1-9.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vikkram Bali whose telephone number is 703.305.4510. The examiner can normally be reached on 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amelia Au can be reached on 703.308.6604. The fax phone numbers for the organization where this application or proceeding is assigned are 703.872.9314 for regular communications and 703.872.9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.306.0377.

Vikkram Bali  
Examiner  
Art Unit 2623



vb  
June 27, 2003